

**OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD**

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**INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 3.3, Articles 1, 1.5, 2, 3, 4, and 5

Sections 347, 350.1, 355, 359, 371.2, 374, 385, 386, 392.4, and 392.5

**Changes to the Occupational Safety and Health Appeals Board's
Rules of Practice and Procedure
Pertaining to Appeals and Reconsideration****SUMMARY**

This rulemaking proposal is intended to clarify and expand the Occupational Safety and Health Appeals Board's (Board) procedures and requirements for pursuing and defending employer appeals from occupational safety and health citations issued by the Division of Occupational Safety and Health. The proposal also adds a new provision to govern motions filed during the Board's process for reconsidering decisions rendered on those appeals.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

This proposed rulemaking action contains non-substantive editorial changes, reformatting of subsections, and grammatical revisions. While these non-substantive revisions are not all discussed in this Initial Statement of Reasons, they are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the Board proposes to implement the practices and procedures outlined below.

Section 347

This section contains definitions for terms used in the Board's regulations. The Board proposes to add two new definitions in subsections (e) and (f) for "completed appeal form" and "day," respectively. These additional definitions are necessary to clarify terms used elsewhere in the regulations.

Section 350.1

This section describes the authority of the Board's administrative law judges (ALJs), who are charged with hearing and resolving employer appeals from occupational safety and health citations. Subsection (a) lists a number of functions that the ALJs may perform. Amendments are proposed to explicitly state that ALJs may hold settlement conferences, compel discovery at any time in the proceedings, and take other actions during a proceeding that are deemed appropriate to fulfill the purposes of the California Occupational Safety and Health Act. These amendments are necessary to clarify existing language in this section that affords the ALJs "the full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Appeals Board" and "to regulate the course of a hearing."

Section 355

This section addresses proper methods of serving documents during an appeals proceeding. Subsection (a) discusses the Board's maintenance of an official address for the parties to the proceeding. An amendment is proposed to state that an employer's failure to keep the Board apprised of its current contact information throughout the proceedings may result in dismissal of the appeal. This proposed change is necessary to clarify the importance of keeping this information current and to afford the Board a means to dispose of an appeal if it is no longer able to contact the employer.

Section 359

Subsection (a) of this section specifies when an appeal is deemed filed with the Board. A proposed amendment would clarify that an appeal cannot be initiated by contacting the Division of Occupational Safety and Health. This amendment is necessary because employers sometimes erroneously believe that they have effectively begun an appeal when they communicate with the Division.

Section 359.1

This section addresses the appeal form used by the Board. Subsection (a) specifies the need to file the form with the Board. Proposed amendments would clarify when the form must be filed and explain that failure to file the form in a timely fashion constitutes grounds for dismissal. These amendments are necessary to add clarity and to notify employers of the consequence inherent in failing to complete their appeal.

Section 371.2

Section 371.2 pertains to amendments made to citations or appeals prior to the hearing. Proposed amendments to subsection (a) would clarify when parties are deemed notified that an appeal has

been docketed. These proposed changes are necessary to clarify the time period during which amendments may be made.

Section 374

This section describes the authority of the Board's administrative law judges (ALJs), who are charged with hearing and resolving employer appeals from occupational safety and health citations. Subsection (a) lists a number of functions that the ALJs may perform. An amendment is proposed to explicitly state that ALJs may address the status of discovery compelled by them prior to the prehearing during the prehearing conference. This amendment is necessary to clarify existing regulatory language (section 350.1(a)) that affords the ALJs "the full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Appeals Board" and "to regulate the course of a hearing." It will also clarify expectations for the parties so that they can properly prepare for the prehearing conference.

Section 385

This section pertains to decisions issued by the ALJs. Subsection (a) states that all proceedings shall be submitted at the close of the hearing unless otherwise ordered. An editorial amendment would clarify that "submitted" means "submitted for decision." This amendment is necessary to clarify the term "submitted."

Section 386

Section 386 addresses post-submission amendments to the issues on appeal and to the Division's action. Subsection (a) currently states that the Board may make these amendments after a proceeding is submitted for decision. A proposed change would state that the Board may amend these issues after both parties have presented evidence. This amendment is necessary to afford the Board the flexibility to make amendments before the matter is submitted for decision.

Section 392.4

A new section 392.4 is proposed to address motion practice during the Board's reconsideration process. The Board receives motions from parties after a petition for reconsideration has been filed. Subsections (a) and (b) of the new regulation would instruct parties on the requirements for filing motions as well as for submitting responses or opposition to a motion, and subsection (c) would specify the timeframes for the same. Subsection (d) would grant the Board discretion to permit late filings upon a demonstration of good cause. This regulation is necessary to provide clear guidance regarding the requirements and timeframes for motions submitted during the reconsideration process.

Section 392.5

This section states that the Board will provide copies of tapes made of the appeal hearings upon request. Technical amendments are proposed for the title and subsections (a) and (b) to clarify that

the Board may provide the copy in a recording medium other than a cassette tape (e.g., a CD). An amendment to subsection (c) would state that the requesting party is responsible for the cost of “delivery” as opposed to the cost of “postage.” The regulation currently refers to “postage.” These amendments are necessary to afford the Board the flexibility to use and rely on different forms of recording technology and to allow the Board to recoup the costs it incurs when a party requests that the Board deliver documents in a manner other than by standard mail.

DOCUMENTS RELIED UPON

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.